IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 435 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JAYDEEPSINH TEJUBHA SOLANKI & 1 - Applicant(s)
Versus
THE STATE OF GUAJARAT - Respondent(s)

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Appearance :
MR NA SHASTRI for Applicant(s) : 1 - 2.
MS HANSA PUNANI, A.P.P. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/03/2007

ORAL JUDGMENT

1. By way of this application the applicants have prayed for quashing and setting aside the impugned order of remand passed by Ld. Metropolitan Magistrate Court No. 21, Ahmedabad dated 01.03.2007 in connection with the FIR No. I-2/2007 lodged before the Sabarmati Police Station, Ahmedabad punishable under sections 406, 420, 506(1) and 114 of the Indian Penal Code.

2. The short facts of the case are that a complaint

bearing C.R. No. I-02/2007 is lodged before the Sabarmati Police Station, Ahmedabad by one Kamuben wife of Chandulal Chimanbhai Raval. The applicants have preferred Misc. Criminal Application No. 122 of 2007 before the Ld. City Civil and Session Court, Ahmedabad under section 438 of the Cr. P.C. for anticipatory bail. The same was rejected by the Additional Sessions Judge, Court No. 10, Ahmedabad on 11th January 2007. Thereafter, they have filed Misc. Criminal Application No. 540 of 2007 before this Court and the same was allowed by this Court on 09.02.2007.

2.1 Thereafter, the concerned Investigation Officer of the Sabarmati Police Station, Ahmedabad has filed application before the Ld. Metropolitan Magistrate Court No. 21, Ahmedabad for getting custody of the accused and also filed the application dated 28.02.2007 pointing out non compliance of the conditions imposed by this court in anticipatory bail and for a direction to remain present before the concerned police station on 19.02.2007.

2.2 Thereafter, the concerned police officer has arrested the accused i.e. petitioner no. 1 and 2 and produced before the Ld. Metropolitan Magistrate Court for getting remand of the said accused for 7 days and the Ld. Metropolitan Magistrate court no. 21 has granted the said application by granting the remand of the accused for 4 days on 01.03.2007. Therefore this petition came to be filed.

3. Learned advocate for the petitioners has submitted that the Ld. Metropolitan Magistrate Court No. 21, Ahmedabad granting the remand of the accused i.e. Petitioner no. 1 and 2 for 4 days is totally illegal without applying his mind and also miscarriage of the legal process of the law and without considering the legal facts and circumstances on record.

4. Heard. I have gone through the documents placed on record. While passing the order the trial court has gone into the facts of the case in detail and has come to the conclusion that, prima facie there is a case against the petitioners. The trial court has

observed that the petitioners have collected various sums of money from the members posing as agents over a period of years and the said fact is required to be ascertained. I am in complete agreement with the view of the trial court that on the facts of the case detained investigation is required. However, this court does not opine anything on merits at this stage as that would prejudicial affect the case of the petitioners. Further it is required to be noted that the petitioners have committed breach of the conditions of the order granting bail passed by this court. In that view of the matter taking a serious view of the same this court is of the view that it would not be appropriate to exercise any discretionary powers qua the petitioners at this stage, no case is made out to cause interference. Hence this petition is dismissed. No order as to costs.

(K.S.JHAVERI,J.)

Suresh*